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SENATE BILL 792

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO LICENSURE; EXPANDING THE POWERS AND DUTIES OF THE  
NEW MEXICO PUBLIC ACCOUNTANCY BOARD; PROVIDING FOR  
FINGERPRINTING AND BACKGROUND CHECK OF AN APPLICANT; INCREASING  
THE AMOUNT IMPOSED FOR AN ADMINISTRATIVE FINE; PROVIDING  
PENALTIES; AMENDING AND ENACTING SECTIONS OF THE 1999 PUBLIC  
ACCOUNTANCY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-28B-1 NMSA 1978 (being Laws 1999,  
Chapter 179, Section 1) is amended to read:

"61-28B-1. SHORT TITLE.--~~[This act]~~ Chapter 61, Article  
28B NMSA 1978 may be cited as the "1999 Public Accountancy  
Act"."

Section 2. Section 61-28B-5 NMSA 1978 (being Laws 1999,  
Chapter 179, Section 5, as amended) is amended to read:

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1 "61-28B-5. BOARD--POWERS AND DUTIES.--

2 A. The board may:

3 (1) appoint committees or persons to advise or  
4 assist it in carrying out the provisions of the 1999 Public  
5 Accountancy Act;

6 (2) retain its own counsel to advise and  
7 assist it in addition to advice and assistance provided by the  
8 attorney general;

9 (3) contract, sue and be sued and have and use  
10 a seal;

11 (4) cooperate with the appropriate authorities  
12 in other states in investigation and enforcement concerning  
13 violations of the 1999 Public Accountancy Act and comparable  
14 acts of other states; and

15 (5) adopt and file in accordance with the  
16 Uniform Licensing Act and the State Rules Act rules to carry  
17 out the provisions of the 1999 Public Accountancy Act,  
18 including rules governing the administration and enforcement of  
19 the 1999 Public Accountancy Act and the conduct of certificate  
20 and permit holders.

21 B. The board shall:

22 (1) maintain a registry of the names and  
23 addresses of certificate and permit holders; and

24 (2) develop, in conjunction with the  
25 department of public safety, rules requiring a criminal history

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1 background check of an applicant for initial or reciprocal  
2 certification in New Mexico as provided for in the 1999 Public  
3 Accountancy Act."

4 Section 3. Section 61-28B-20 NMSA 1978 (being Laws 1999,  
5 Chapter 179, Section 20) is amended to read:

6 "61-28B-20. ENFORCEMENT--ADMINISTRATIVE VIOLATIONS AND  
7 REMEDIES.--

8 A. The board may take, after providing [~~any~~] a  
9 person due process pursuant to the Uniform Licensing Act,  
10 corrective action identified in Subsection B of this section  
11 following a finding that an applicant or licensee:

12 (1) committed fraud or deceit in obtaining a  
13 certificate or permit;

14 (2) lost a certificate or permit through  
15 cancellation, revocation, suspension or refusal of renewal in  
16 any other state for cause, as defined by board rule;

17 (3) failed to maintain compliance with the  
18 requirements of the 1999 Public Accountancy Act and board rules  
19 for issuance or renewal of a certificate or permit or failed to  
20 report material changes to the board, as required by board  
21 rule;

22 (4) lost the authorization to practice in any  
23 state or before any federal agency through revocation or  
24 suspension of that authorization;

25 (5) committed dishonest, fraudulent or grossly

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1 negligent acts in the practice of public accountancy or in the  
2 filing or failure to file [~~his~~] the applicant's or licensee's  
3 own income or other federal, state or local tax returns;

4 (6) violated [~~any~~] a provision of the 1999  
5 Public Accountancy Act or [~~any~~] a rule promulgated by the board  
6 pursuant to that act;

7 (7) violated [~~any~~] a rule of professional  
8 conduct promulgated by the board pursuant to the 1999 Public  
9 Accountancy Act;

10 (8) has been convicted of a felony or of [~~any~~]  
11 a crime an element of which is dishonesty or fraud under the  
12 laws of the United States, of New Mexico or of any other state,  
13 or of any other jurisdiction, if the acts involved would have  
14 constituted a crime under the laws of New Mexico;

15 (9) performed [~~any~~] a fraudulent act while  
16 holding a certificate or permit issued pursuant to the 1999  
17 Public Accountancy Act or prior law; or

18 (10) participated in any conduct reflecting  
19 adversely upon the applicant's or licensee's fitness to engage  
20 in practice.

21 B. After a finding by the board that an applicant  
22 or licensee has committed a violation identified in Subsection  
23 A of this section, the board may take, with or without terms,  
24 conditions and limitations, one or more of the following  
25 corrective actions:

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1 (1) deny an application or revoke a  
2 certificate or permit issued pursuant to the 1999 Public  
3 Accountancy Act or corresponding provisions of prior law;

4 (2) suspend [~~any~~] a certificate or permit for  
5 a period of not more than five years;

6 (3) reprimand, censure or limit the scope of  
7 practice of a licensee;

8 (4) impose an administrative fine not  
9 exceeding [~~one thousand dollars (\$1,000)~~] ten thousand dollars  
10 (\$10,000); or

11 (5) place the licensee on probation.

12 C. In lieu of or in addition to [~~any~~] a remedy  
13 specifically provided in Subsection B of this section, the  
14 board may require of a licensee:

15 (1) a quality review conducted in such a  
16 fashion as the board may specify;

17 (2) satisfactory completion of such continuing  
18 professional education programs as the board may specify;

19 (3) correction of the violation identified;

20 and

21 (4) any other suitable remedial action as  
22 determined by the board.

23 D. In [~~any~~] a proceeding in which a remedy provided  
24 by Subsection B or C of this section is imposed, the board may  
25 also require the respondent to pay the costs of the

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1 proceeding."

2 Section 4. Section 61-28B-27 NMSA 1978 (being Laws 1999,  
3 Chapter 179, Section 27, as amended) is amended to read:

4 "61-28B-27. FEES.--The board may collect from certificate  
5 holders, permit holders, applicants and others the following  
6 fees:

7 A. for examination, a fee not to exceed four  
8 hundred dollars (\$400) per examination section;

9 B. for certificate issuance or renewal, a fee not  
10 to exceed one hundred seventy-five dollars (\$175) per year;  
11 provided, however, the board may charge a biennial fee of not  
12 more than twice the annual fee;

13 C. for firm permits, a fee not to exceed one  
14 hundred dollars (\$100) per year; provided, however, the board  
15 may charge a biennial fee of not more than twice the annual  
16 fee;

17 D. for incomplete or delinquent continuing  
18 education reports, certificate or permit renewals, a fee not to  
19 exceed one hundred dollars (\$100) each;

20 E. for preparing and providing licensure and  
21 examination information to others, a fee not to exceed seventy-  
22 five dollars (\$75.00) per report;

23 F. reasonable administrative fees for such services  
24 as research, record copies, duplicate or replacement  
25 certificates or permits;

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1           G. a fee for fingerprinting and background check  
2           for an applicant for certification not to exceed one hundred  
3           dollars (\$100);

4           [~~G.~~] H. for certificate reinstatement, a fee not to  
5           exceed one hundred seventy-five dollars (\$175), plus past due  
6           fees and penalties;

7           [~~H.~~] I. for waiver to comply with continuing  
8           professional education requirements, a fee not to exceed  
9           seventy-five dollars (\$75.00) per application; and

10          [~~I.~~] J. for reentry into active certificate status  
11          and to comply with continuing education, a fee not to exceed  
12          seventy-five dollars (\$75.00) per application."

13          Section 5. A new section of the 1999 Public Accountancy  
14          Act is enacted to read:

15                 "[NEW MATERIAL] FINGERPRINTING--CRIMINAL HISTORY  
16                 BACKGROUND CHECKS.--

17                 A. All applicants for certification as provided for  
18                 in the 1999 Public Accountancy Act shall:

19                         (1) be required to provide fingerprints on two  
20                         fingerprint cards for submission to the federal bureau of  
21                         investigation to conduct a national criminal history background  
22                         check and to the department of public safety to conduct a state  
23                         criminal history check;

24                         (2) pay the cost of obtaining the fingerprints  
25                         and criminal history background checks; and

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1                   (3) have the right to inspect or challenge the  
2 validity of the record development by the background check if  
3 the applicant is denied certification as established by board  
4 rule.

5                   B. Electronic live scans may be used for conducting  
6 criminal history background checks.

7                   C. Criminal history records obtained by the board  
8 pursuant to the provisions of this section are confidential.  
9 The board is authorized to use criminal history records  
10 obtained from the federal bureau of investigation and the  
11 department of public safety to conduct background checks on  
12 applicants for certification as provided for in the 1999 Public  
13 Accountancy Act.

14                   D. Criminal history records obtained pursuant to  
15 the provisions of this section shall not be used for any  
16 purpose other than conducting background checks. Criminal  
17 history records obtained pursuant to the provisions of this  
18 section and the information contained in those records shall  
19 not be released or disclosed to any other person or agency,  
20 except pursuant to a court order or with the written consent of  
21 the person who is the subject of the records.

22                   E. A person who releases or discloses criminal  
23 history records or information contained in those records in  
24 violation of the provisions of this section is guilty of a  
25 misdemeanor and shall be sentenced pursuant to the provisions

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1 of Section 31-19-1 NMSA 1978."

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